

REMARKS

Summary

Claims 1-21 stand in this application. Claims 1, 6, 17 and 19-21 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1, 6, 17 and 19-21 in order to facilitate prosecution on the merits. Support for the above amendments can be found in the specification at least at paragraphs [0026]-[0027].

35 U.S.C. § 103

At page 3, paragraph 3 of the Office Action claims 1-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US 7,099,346 to Kanterakis (“Kanterakis”) in view of US 5,197,557 to Kudo (“Kudo”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching

or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. *See* MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1-21. Therefore claims 1-21 define over Kanterakis and Kudo whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

initiating a channel access for at least one of a plurality of queues, each queue corresponding to a receiver address of a received packet....

As correctly noted in the Office Action at least on page 4, Kanterakis does not disclose a plurality of queues. According to the Office Action, the missing language is taught by Kudo. Applicant respectfully disagrees.

Applicant respectfully submits that Kudo fails to disclose the missing language of the claimed subject matter. For example, the abstract of Kudo, in relevant part, states:

The system receives packets each made up of a predetermined until data from a plurality of terminals, these packets are arranged to once form a packet queue, the packets in the packet queue are sequentially and selectively transmitted...

By way of contrast, the claimed subject matter teaches "initiating a channel access for at least one of a plurality of queues, each queue corresponding to a receiver address of a received packet...." Applicant respectfully submits that the use of a single queue, as

arguably taught by Kudo, is clearly different than a plurality of queues as recited in independent claim 1.

Moreover, Applicant respectfully submits that he has been unable to locate any teaching in Kudo directed to “each queue corresponding to a receiver address of a received packet” as recited in claim 1. In contrast, Applicant respectfully submits that Kudo, arguably, teaches arranging packets in a packet queue according to immediateness priority. Applicant respectfully submits that arranging packets according to immediateness, as arguably taught by Kudo, is clearly different than a plurality of queues, each queue corresponding to a receiver address of a received packet as recited in claim 1. Therefore, Applicant respectfully submits that Kudo fails to disclose, teach or suggest the missing language. Furthermore, Applicant respectfully submits that Kanterakis also fails to teach, suggest or disclose the missing language. Consequently, Kanterakis and Kudo, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See MPEP § 2143.03*, for example. Accordingly, removal of the obviousness rejection with respect to claim 1 is respectfully requested. Claims 2-5 also are non-obvious and patentable over Kanterakis and Kudo, taken alone or in combination, at least on the basis of their dependency from claim 1. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Applicant respectfully submits that independent claims 6, 17 and 19-21 have been amended to recite features similar to those recited in claim 1. Therefore, Applicant

respectfully submits that claims 6, 17 and 19-21 are not obvious and are patentable over Kanterakis and Kudo, taken alone or in combination, for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 6, 17 and 19-21. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 7-16 and 18 that depend from claims 6 and 17 respectively, and therefore contain additional features that further distinguish these claims from Kanterakis and Kudo.

For at least the reasons given above, claims 1-21 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Accordingly, removal of the obviousness rejection with respect to claims 1-21 is respectfully requested. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

Appl. No. 10/634,417
Response Dated December 4, 2007
Reply to Office Action of September 4, 2007

Docket No.: 1020.P17472
Examiner: Chery, Dady
TC/A.U. 2616

It is believed that claims 1-21 are in allowable form. Accordingly, a timely
Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss
any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any
overpayments under 37 C.F.R. § 1.16 or § 1.17 to deposit account 50-4238.

Respectfully submitted,

KACVINSKY LLC

/John F. Kacvinsky/

John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

Dated: December 4, 2007

KACVINSKY LLC
C/O Intellecate
P.O. Box 52050
Minneapolis, MN 55402
(724) 933-5529